P. M. S. S. ... Table ...

SUPREME COURT.

BEFORE HIS HONOR JUDGE McCULLY.

THURSDAY, January 5th—(continued.)

CIVIL CAUSES—HAWAIIAN JURY.

Pauahi Burrows and John Burrows vs Kaiiiulaula; ejectment. Castle & Hatch for plaintiffs, R. F. Bickerton for defendant. A disclaimer as to part of the land was put in by Mr. Bickerton. The case occupied the court until a late hour and the jury after half an hour's retirement brought in a verdict dividing the land between plaintiff and defendant. This verdict was not accepted, the plaintiff's claim being good for all the land or for none at all, and it being then 8 P. M. the court adjourned, instructing the jury to re-assemble the following morning.

FRIDAY, 6th:

when the court having given further instructions, they after 20 minutes retirement brought in a verdict for the plaintiff with $1 damages. Mr. Bickerton noted exceptions to the verdict.

H. M. Emma Kaleconalani vs Nawelu; ejectment. Mr. Cecil Brown appeared for plaintiff and put in the title deeds of the land. Defendant's counsel then intimated to the court that his client instructed him that there were no deeds in existence, and as the deeds were now produced he had no counter evidence to offer. The jury were therefore instructed to return a verdict for the plaintiff, and to assess the damages, which after twenty minutes retirement they fixed at $50.

Liena (k) vs Mary K. Pahau *et al*; ejectment. Mr. Hartwell appeared for plaintiff and after evidence had been given filed a disclaimer as to damages. Mr. Davidson for defendant claimed a non-suit on the ground that possession by defendant has not been proved. Mr. Hartwell replied that in defending the action for ejectment the other side had admitted possession. He further contended that as the plaintiff claimed under the same title as defendant, (as co-tenant), possession by the latter was implied. His Honor said that the mere service on a person did not amount to proof of possession, unless the service was made upon him on the premises in question; also that it had been the uniform custom and practice to prove defendant's possession in any action for possession of the premises. His Honor however would not in this case grant the motion for non-suit, but would let the case go to the jury. Mr. Davidson excepted to this ruling. The defence was then proceeded with, and adverse possession being disclosed by the evidence Mr. Hartwell objected to any evidence of that character the claim being that defendant was only a tenant in common. The court ruled that the evidence be admitted; a co-tenant could not claim against an adverse possession which extended beyond twenty years. The jury brought in a verdict for the plaintiff three jurors dissenting.

Kaupena *et al.* vs Naoho. In this case plaintiff was allowed to file an amendment of his plaint on paying costs and consenting to an adjournment of the hearing until next term. Mr. Davidson appeared for defendant.

SATURDAY, 7th.

The King vs W. M. Gibson. Argument on the demurrer to the indictment for libel. (See full report elsewhere in this issue.)

Rex vs Wm. Davis. Manslaughter; (on board the steamer Anjer Head.) The prisoner was brought up for judgment, Mr. Hartwell, who had conducted the prosecution, addressed the court. He said that it was no doubt difficult to decide what punishment was suitable to this case. Two objects were to be held in view in punishment. One was that the penalty should be as nearly as possible measured to the actual guilt. In the present instance no one but the prisoner himself could know to what extent he was wrong, or criminal in intent, or by omission of precaution. The other object of punishment was to act with a deterrent effect on society. He felt for the prisoner, for his wife and children. On the other hand he could not help regarding the natural feeling of the countrymen of the unoffending man who had lost his life whilst peaceably going about his work. As a matter of precedent he asked the court to fix a punishment that should not be too low; and that considerations of leniency should be left to the Executive rather than taken into account by the Judiciary. In the indictment the Government went as low as it could, and in rendering their verdict the jury went as low as they could. He had no doubt, indeed he had been expressly assured that if in course of time a showing were made to the executive it would be very favorably considered.

Mr. Preston desired to say a few words for the prisoner, who was a stranger in a strange land, who had a wife and family now in a foreign land entirely dependent upon ... and who, but for the liberality of ... captain, would be penniless here to-day. He asked the court to temper justice with mercy. He had been informed by the jury had sent a memorandum to the court saying that they had intended to add to their verdict a recommendation to mercy. No one could regret more than the prisoner the unfortunate accident which had led to these proceedings.

His Honor said he had taken an unusually long time to consider his sentence and had given it serious and anxious consideration. He had also had the privilege of conferring with his associates on the bench. No one could feel greater compassion and sympathy for the prisoner than he had. There was a distinction between the offence of which he had been found guilty and all other criminal offences known to the law, in that it did not carry with it the inference of a depraved intent. He had before him a recommendation to mercy signed by all the jury, and he accepted it fully as if it had been attached to the verdict. In one sense of the word this recommendation could not influence him because his own mind was so strongly set in that direction that his feeling on the subject could not be rendered greater by the opinions or persuasions of others. The prisoner was not before the court without a character, and the fact that he had a family spoke well presumptively for his character. A strong point on this matter was that it was an *alien case*. He used the word alien in contradistinction to foreigner. They, who were of foreign birth, although residents here, all called themselves foreigners. But in this case all the parties concerned, the prisoner, the dead man and all the witnesses of the deed would in the ordinary course of things, have been in a few hours beyond their juri-diction. It was the accidental circumstance of this ship being at our wharves which had thrown upon the court the necessity of considering this sentence. Reviewing the matter in all its bearings, he had come to the conclusion that the punishment must be imprisonment. In this country we had, up to the present time, upheld old-fashioned ideas about the use of deadly weapons and killing. Very far from us be the disgraceful laxity which had characterized some of the Southern States of America or even that lesser degree of indifference to human life which has prevailed in California and the neighboring States. We could not afford to have it said that a man might kill another with a deadly weapon and pay for it in cash. In two cases only in which death had been the result of pure accident had that court made the penalty a fine. Giving the prisoner all the leniency he was able to do, he must sentence him to imprisonment with hard labor for nine months and to pay the costs of court. The consideration must come to all minds that the demand that punishment be inflicted comes up from the man himself who lost a life. He had treated this case as he should if he had been dealing with one of any other nationality.

Rex vs Frank Davis. This prisoner was brought up for sentence. His Honor, addressing the prisoner, said: "You have been convicted of an assault with a deadly weapon—a pistol. It has been shown that you had been drinking during the day and that you were under the influence of liquor at the time that you committed the offense. At the same time the Court instructed the jury that drinking and its effects were no excuse or palliation of crime. There is no proof aside from this case that you are a dangerous, quarrelsome man when you allow yourself to fall under the influence of drink. On another occasion you used a hatchet. In the present case you went into the dwelling of a native, armed with a loaded pistol, and fired two or three times, endangering the lives of the inmates and routing the family from the house. You are liable to do that at any time when you get drunk. The Court considers that it is imposing an exceedingly light sentence in condemning you to imprisonment at hard labor for six months and to pay a fine of $50.

DIVORCE CASES.

... w., vs Aman ch. The ground of the ... was desertion, and there was no appearance for the respondent. After hearing the evidence the Court granted a decree. Mr. Holokahi ... appeared for Kahee.

... vs Keawekolohe k. Mr. Holokahiki ... for libellant and defendant was present ... self. The complaint was desertion, which ... proven, a decree was granted.

Nipoa vs Makuahine. The ground in this case was also desertion and the Court granted a decree. Mr. Holokahiki appeared for libellant.

Robt. von Oelhoffen vs Caroline von Oelhoffen. The ground of the libel was adultery. Both parties were in Court. After hearing the evidence the Court granted a divorce.

Swinton vs Swinton. This case was partly heard and continued until this day.

MONDAY, January 9th.

CIVIL CAUSES—HAWAIIAN JURY.

Mahoe k. vs. Puka and J. N. Paikuli. This case came up on appeal from the Intermediary Court. Mr. Bickerton for plaintiff; Mr. Dole for defendant. The case occupied the whole day, and resulted in a verdict for the plaintiff. Mr. Dole noted an exception to the verdict.

TUESDAY, 10th.

Kamoku w, *et al.*, vs Kauwe w; ejectment. Mr. Castle appeared for plaintiffs, but finding that his client's case broke down on her own testimony asked for a non suit, which was granted. Mr. Hartwell appeared for defendant.

Kalaeokekoi k, vs D. Kahanu k; ejectment. Plaintiff was represented by no less than three counsel, Messrs. W. L. Holokahiki, J. L. Kaulukou and J. Russell; Mr. Davidson appeared for the defendant. After both sides had been heard, Mr. Kaulukou wished to put in the record of the estate of Kalaiokekoi (deceased) as evidence in rebuttal to show a settlement of the estate. Mr. Davidson objected to such a document being put in at that stage of the proceedings, and disclaimed having denied that the estate in question had been settled up, hence there could not be any question of rebuttal as suggested by plaintiff's counsel. His Honor expressed that the record should have been put in before and not at that time, but as it might be important that it should be examined he would adjourn the case till next day, the hour then being late.

Before the Court adjourned, Fook Gee, who was some time ago sentenced by the Police Justice to a fine and two months imprisonment for having opium in his possession and appealed to this Court, surrendered to his bail. It appeared that there had been a failure to perfect defendant's appeal through non-payment of the costs. The Court ordered Fook Gee to appear again on Thursday, and that in the meantime the Marshal should take no steps in respect to his case.

WEDNESDAY, 11th.

Kalaeokekoi vs D. Kahanu. When the jury in this case had taken their places, His Honor said that he had given consideration to the proposed introduction as evidence of the record of the estate of Kalaiokekoi (deceased), and had come to the conclusion that he could not permit it to be put in now. His Honor expressed his regret that it had not been introduced ealier, as he thought it would have yielded some valuable evidence for both sides. Mr. Kaulukou contended that it had been stated by one of defendant's witnesses that no steps had been taken to show the title or to settle the estate, and as the production of this record would prove that this had been done, it should be admitted as evidence in rebuttal. His Honor said that Mr. Kaulukou was plaintiff's counsel and should have put in the record before. He had not done so, and it was now too late and could not be put in. Mr. Kaulukou noted an exception to His Honor's ruling. After a short retirement, the jury came back into Court and asked if a verdict of 8 to 4 would be taken, but were sent back to reconsider the matter. Ultimately, a verdict for the defendant was returned, three jurors dissenting. Plaintiff's counsel excepted to the verdict as contrary to the law and evidence.

Kawili *et al.*, vs Kealina k, *et al.*; ejectment. Mr. Russell for plaintiffs; Mr. Kaulukou for defendant. On the case being opened for the plaintiff the Court remarked that a sister and a grand-daughter could not both inherit. Counsel for the defence offering no objection, Kawili's name was struck from the record, and that of Kapoe, (the grand-daughter) substituted. Mr. Kaulukou then admitted that Napoi is the grand-daughter of Keaka, and that the latter was the sister to Wai, to whom the Royal Patent for the land in dispute was originally issued. At this stage of the proceedings, Mr. Russell asked for and obtained a non-suit.

Kapohaku w, and Pau w, vs Koa; ejectment. Witnesses for the plaintiffs not being in attendance, a nonsuit was accepted. Mr. Russell for plaintiffs; Mr. Cecil Brown for defendant.

In re the proof of the will of Keaoelele deceased; appeal from the decision of Chief Justice Judd, sitting in probate. Mes. Kaulukou and Holokahiki for appellant. Russell for contestant. Appeal was unsuccessful, the will being very badly drawn. Appellant's counsel noted an exception to the verdict as contrary to the law and the evidence.

THURSDAY, 12TH.

Rex vs Fook Gee. Mr. W. O. Smith, for the Crown, explained to the Court that in this case the defendant had appealed and that the bail had been perfected and the bailee released before the costs of the appeal had been paid. The appeal had not been perfected and the case did not appear on the calendar. He believed everything had been done in good faith; but the only way there appeared to be to bring the matter under the notice of the court was by causing Fook Gee's bondsman to surrender him. His Honor inquired of Mr. Bickerton who was present in court whether he was acquainted with the facts of the case, and was informed that the matter occurred during that gentleman's absence from Honolulu. Mr. Russell, who was counsel for Fook Gee in the Police Court, informed His Honor that he had prepared the bail bond and when he left the court had instructed the interpreter that the costs were to be paid. His Honor then informed Fook Gee, (through the interpreter Akana) how the trouble had arisen and that the amount of unpaid costs was $4 40.

Mr. Dole then addressed the court as counsel for Fook Gee. He said it appeared clear that the matter of non-payment of costs was entirely accidental, and through misunderstanding; the defendant naturally thinking that he would not have been let go at liberty if the appeal had not been all right. The difficulty had arisen through the carelessness of the officials. The question which presented itself to his mind, was whether the term of two month's imprisonment had not absolutely expired, and only the fine remained to be paid. He had been in virtual custody—such as he could recover damages for in a case of false imprisonment. It was for the officials, when the ten days had elapsed, to see that he was in gaol.

Mr. Smith contended that no right of appeal remained. If there was any blame to the officials, it was for admitting defandant to bail before the costs were paid. By his own act he had put himself out of the hands of the police, and he was now bound to go and work out his sentence. The officers had been misled by his conduct.

His Honor said that there was still another view to be taken of the case. Defendant's right to his appeal had been recognized in a part and failed in a part. He has enjoyed that part of the appeal which consists in his personal freedom, and has enjoyed it by authority of the law. The case differed from an ordinary one in which there was a failure to perfect the appeal and should, he thought, he treated differently.

Mr. Smith urged that the Police Magistrate could not now legally send up this appeal.

Mr. Dole said he saw no other way out of the case than that he had already suggested.

After some further remarks His Honor ordered that the appeal be allowed to be perfected on payment of costs; and added that he thought counsel having charge of a case for persons ignorant of our language and customs should see things properly completed.

IN BANCO.

Liena vs Pahau *et al;* Defendant's exceptions to the verdict in this case, and to His Honor's ruling on the non-suit point (see above, Jan. 6th) were argued and judgment on them deferred.

Magnin vs Furgie. Argument was heard on the demurrer in this case. Judgment deferred.

Fook Gee vs Ah Lo *et al.* Exceptions had been filed by both sides in this case. Mr. Hartwell argued defendant's exceptions and Mr. Dole replied. Judgment deferred. Mr. Dole withdrew plaintiff's exceptions.

Briggs vs Mills. Exceptions against the demurrer of the Chief Justice on a motion for a new trial. A long argument occurred as to the advisibility of certain affidavits which Mr. Bickerton desired to put in. Judgment deferred.

THE scales used for weighing in the Assay Office at New York are so delicate that, when brought to a balance with two pieces of paper of equal size in the pans, the mere writing of a name with a lead pencil on one of the pieces of paper will add enough weight to the paper to turn the scales in its favor.